

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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FREEDOM FROM RELIGION  
FOUNDATION, INC.,

Plaintiff,

v.

Case No. 12 CV 0818

DOUGLAS SHULMAN,  
COMMISSIONER OF THE  
INTERNAL REVENUE SERVICE,

Defendant.

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**JOINT PRELIMINARY PRETRIAL CONFERENCE REPORT**

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The parties jointly submit the following Preliminary Pretrial Conference Report:

1. Statement of the Case. The Plaintiff alleges that Defendant is violating the Establishment Clause of the First Amendment to the United States Constitution by failing to enforce the electioneering restrictions of § 501(c)(3) of the Tax Code against churches and religious organizations. Defendant denies that the Court has subject matter jurisdiction and denies all allegations of unconstitutional conduct.

2. Name of Related Cases. None.

3. Statement of Factual and Legal Issues. Whether the Defendant is violating the Establishment Clause.

4. Description of Amendments to Pleadings. The parties reserve the right to amend pleadings as allowed by the Court's Scheduling Order.

5. Identity of Added New Parties. None anticipated at this time, but the Commissioner of the Internal Revenue Service, sued in his official capacity, is no longer Douglas Shulman. Daniel Werfel assumed the position of Acting Commissioner of the Internal

Revenue Service on May 22, 2013. Under Rule 25(d), when a public officer, who is a party to a case in his or her official capacity, resigns or otherwise ceases to hold office, the officer's successor is automatically substituted as a party. No court order is necessary to substitute the new party. Subsequent proceedings should be in the substituted party's name.

6. Estimated Trial Length. The parties anticipate that trial will take two to four days.

7. Other Matters Which May Affect Disposition of Case. The parties anticipate that dispositive motions will be filed. If such motions fail to dispose of the case, then a trial to the Court would be appropriate as this matter does not raise issues requiring a jury's determination.

8. Proposed Discovery Plan. The parties propose the following deadlines:

- a. Rule 26(a)(1) initial disclosures deadline: October 2, 2013
- b. Dispositive motions deadline: April 1, 2014;
- c. Deadline for the disclosure of expert witnesses: May 1, 2014;
- d. Deadline for the disclosure of rebuttal expert witnesses: July 1, 2014;
- e. Discovery deadline: August 1, 2014;
- f. Trial Date: after September 1, 2014;
- g. At this time, the parties do not anticipate any modification of the Federal

rules relating to the number of depositions or interrogatories.

9. Additional statement regarding the discovery of tax return information. The parties agree that no discovery requests shall be construed to include requests for documents or other information that is protected from disclosure of returns and return information pursuant to 26 U.S.C. § 6103 and/or § 6110(c).

10. Additional statement regarding the discovery of electronically stored information.

- Requests to disclose electronically stored information will be limited to data reasonably available to the parties in the ordinary course of business.

- The parties agree they will make available e-mail communications and other electronically stored information in printed form, *i.e.*, in .PDF format or as TIFF images with a load file. All such data will be produced to the opposing party on one or more recordable compact discs.
- No other problems are anticipated in connection with electronic or computer-based discovery.

11. Pursuant to Fed. R. Civ. P. 5(b)(2)(E), the parties consent to service of pleadings and other papers by electronic means.

Dated this 16 day of September, 2013.

**BOARDMAN & CLARK LLP**

By:

/s/ Richard L. Bolton

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Dated this 16 day of September, 2013.

**U.S. DEPARTMENT OF JUSTICE -  
TAX DIVISION**

By: /s/ Richard G. Rose

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Notice of Electronic Filing and Service

I hereby certify that on September 16, 2013, this document was filed electronically in accordance with the ECF procedures of the United States District Court, Western District of Wisconsin, under Rule 5(d)(1), Federal Rules of Civil Procedure. All parties who are represented and have consented to service of electronically filed documents are served upon receipt of the NEF from the electronic filing system.

To the best of my knowledge, there are no parties in this case that require service by means other than electronic service using the Court's NEF. The original document on file with the filing party contains valid original signatures.

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